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7 UNITED STATES DISTRICT COURT  
8 DISTRICT OF NEVADA

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10 UNITED STATES OF AMERICA, )

11 Plaintiff, )

12 vs. )

13 ANGEL OLIVIDIO ESCOBAR- )  
14 SABALLOS, )

15 Defendant . )  
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2:11-CR-00089-PMP-CWH

**ORDER**

17 Before the Court for consideration is Defendant Escobar's Motion  
18 Pursuant to 28 U.S.C. §2255 To Vacate, Set Aside Or Correct Sentence By A Person  
19 In Federal Custody (Doc. #158). For the reasons set forth in the Government's  
20 Opposition to Defendant's Motion (Doc. #169), the Court finds Defendant's motion  
21 pursuant to 28 U.S.C. §2255 must be denied.

22 First, Defendant's claims are procedurally defaulted as he failed to raise  
23 them on direct appeal and has here presented no "cause and prejudice" basis for  
24 failing to do so. *Withrow v. Williams*, 507 U.S. 680 (1993). Moreover, as argued by  
25 the Government in its Opposition (Doc. #169), each of Defendant's claims fails on  
26 the merits.

1 Further, with respect to Defendant's repackaged claim of "ineffective  
2 assistance" of counsel, the "successive claim rule" would bar Defendant's relief as  
3 he essentially made the same argument of ineffective assistance of counsel on direct  
4 appeal. Regardless, Defendant has here failed to show his counsel's representation  
5 fell below an objective standard of reasonableness, and that counsel's deficient  
6 performance prejudiced him. *Strickland v. Washinton*, 466 U.S. 668 (1984).

7 **IT IS THEREFORE ORDERED** that Defendant Escobar's Motion  
8 Pursuant to 28 U.S.C. §2255 To Vacate, Set Aside Or Correct Sentence By A Person  
9 In Federal Custody (Doc. #158) is **DENIED**.

10 **IT IS FURTHER ORDERED** that finding that Defendant Escobar's  
11 Motion lacks any merit, a Certificate of Appealability is also **DENIED**.

12 DATED: February 27, 2014.

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16 PHILIP M. PRO  
17 United States District Judge  
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